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Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories

Israeli Practices Affecting the Human Rights of the Palestinian People in the Occupied Palestinian Territory, including East Jerusalem

Report of the Secretary-General*

Summary

The present report has been prepared pursuant to General Assembly resolution 72/87. It focuses on Israeli practices affecting the human rights of Palestinians in the Occupied Palestinian Territory, including East Jerusalem, with a particular focus on the situation in Gaza, and covers the period from 1 June 2017 to 31 May 2018.

* The present report was submitted after the deadline in order to reflect the most recent developments.

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I. Introduction

1. Submitted pursuant to General Assembly resolution 72/87, the present report covers the period from 1 June 2017 to 31 May 2018. It is based on monitoring conducted by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and on information collected by other United Nations entities and non-governmental organizations. It should be read in conjunction with the report of the Secretary-General on Israeli practices affecting the human rights of the Palestinian people (A/72/565), and the report of the Office of the United Nations High Commissioner for Human Rights submitted to the thirty-seventh session of the Human Rights Council pursuant to resolutions S-9/1 and S-12/1 (A/HRC/37/38).

2. The present report on Israeli practices affecting the human rights of Palestinians in the Occupied Palestinian Territory focuses principally on Gaza in the light of the disastrous humanitarian situation with which it is confronted, including as a result of the ongoing closures,[1] violations of international humanitarian and human rights law and a peak in violence that led to the highest number of fatalities since the 2014 hostilities.

II. Legal framework

3. The entire Occupied Palestinian Territory, including the Gaza Strip, is considered as being occupied by Israel, to which international humanitarian law and international human rights law apply.[2]

4. According to the international humanitarian law provisions governing occupation, the occupying power is obliged to protect the population of the occupied territory, notably to treat the protected persons humanely at all times and without any discrimination, and to take all necessary measures in its power to restore and ensure, as far as possible, public order and safety (l'ordre et la vie publics), while respecting, unless absolutely prevented, the laws in force in the country.[3] The occupying power is also required to respect, protect and fulfil the human rights of persons in the occupied territory pursuant to its international obligations.

5. A detailed analysis of the applicable legal framework can be found in the report of the Secretary-General to the Human Rights Council (A/HRC/34/38, paras. 3–11).

III. Gaza blockade and closure

6. As the occupying power, Israel has, to the fullest extent of the means available to it, the duty to ensuring the food and medical supplies of the population and to bring in the necessary foodstuffs, medical stores and other articles if the resources of the

[1] The term "closures" is used to describe the imposition by Israel of prolonged closures and economic and movement restrictions in Gaza.

[2] See A/HRC/34/38, para. 10; International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, para. 101. See also Security Council resolutions 1860 (2009) and 2334 (2016), among others; General Assembly resolutions 62/181 and 63/98, among others; Human Rights Council resolution 10/18, among others; reports of the United Nations High Commissioner for Human Rights, A/HRC/12/37, para. 9, and A/HRC/8/17, para. 5, among others; and the declaration of 17 December 2014 adopted by the Conference of High Contracting Parties to the Fourth Geneva Convention (A/69/711-S/2015/1, annex).

[3] Hague Regulations annexed to the Hague Convention IV of 1907 (Hague Regulations), art. 43, and Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), art. 27; A/HRC/34/38, para. 13.

occupied territory are inadequate.[4] The obligation of Israel towards the population of the Occupied Palestinian Territory reaches beyond the provision of basic supplies as it encompasses an obligation to respect its human rights, including economic, social and cultural rights, such as the right to an adequate standard of living.[5]

7. The Secretary-General has repeatedly expressed his concern over the impact of the Gaza closures on the life of the civilian population, underlining that it may amount to collective punishment, which is prohibited under international law.[6]

A. Movement of people and goods in and out of Gaza

8. Restrictions on freedom of movement of people and goods by the Israeli authorities remained a serious concern during the reporting period.

Impact of the closures on the right to freedom of movement

9. Freedom of movement is guaranteed under international human rights law,[7] which expressly provides that everyone shall be free to leave any country, including his or her own, and that no one shall be arbitrarily deprived of the right to enter his or her own country.[8] While the right to freedom of movement may be restricted, the right shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, are consistent with the other rights recognized in international human rights law and are proportionate to the interest to be protected.[9] Restrictions on the freedom of movement from Gaza, which have a significant negative impact on the enjoyment of economic, social and cultural rights, such as the right to an adequate standard of living, health, education, work and family life, may also amount to collective punishment under international humanitarian law.[10]

10. Egyptian authorities kept the Rafah crossing closed for much of the reporting period, making the Erez crossing the only regular means of exit for Gazans to the West Bank and abroad. As a general rule, every Palestinian in Gaza who needs to travel through Erez can do so only with an Israeli issued permit, provided that he or she falls into one of three main categories[11] and the quotas for passage, defined by Israeli security authorities.[12]

11. Regarding the category of patients and their companions, only patients in need of life-saving or life-changing medical treatment that is unavailable in Gaza can apply for an exit permit, which is for single use only. Chronically ill patients in need of multiple medical appointments must apply each time they need to exit Gaza. Regarding other exceptional cases, one can exit Gaza to visit a "first-degree" relative, i.e., mother, father, brother, sister, children and husband or wife "who is seriously ill

[4] Fourth Geneva Convention, art. 55.

[5] A/HRC/24/30, para. 22, A/HRC/34/36, para. 36 and A/HRC/31/40, para. 36; See also A/HRC/34/38, paras. 30–31 and 33.

[6] A/72/565, para. 28.

[7] International Covenant on Civil and Political Rights, art. 12 (1).

[8] Ibid., art. 12 (2) and (4).

[9] Ibid., art. 12 (3); Human Rights Committee, general comment No. 27 (1999) on freedom of movement, para. 14.

[10] A/HRC/34/38, paras. 64 and 65.

[11] The three main categories are merchants, patients and their companions and other exceptional cases.

[12] Israel Ministry of Defense, Coordination of Activities in the Territories, "Unclassified status of authorizations for the entry of Palestinians into Israel, their passage between Judea and Samaria and the Gaza Strip and their travel abroad", September 2017.

with a potential life-threatening condition or who requires a protracted hospitalization".[13]

12. Fulfilling the criteria for passing through Erez does not guarantee an exit permit. For example, to visit an ailing mother, one must first collect and submit to Israeli authorities a medical report issued by a hospital confirming that the mother is seriously ill; a copy of an identity document issued by Israeli authorities (between 30,000 and 40,000 people living in Gaza do not have such identity documents and can never apply for any type of permit)[14] and, if travelling to or through Jordan, a letter from the Jordanian authorities allowing the applicant to travel through Jordan.

13. An amendment to the rules regulating the processing of exit permit requests, introduced in October 2017,[15] extended the timeline for a reply to applications from 14 working days to between 23 and 70 working days, depending on the category of applicant. This amendment was challenged by Israeli human rights organizations in a petition submitted to the Israeli High Court of Justice on 10 April 2018,[16] on the basis that the extension of the processing time for requests, without any justification or legal grounds, causes unnecessary and disproportionate harm to the human rights of Gaza residents. The first hearing is expected to be held in January 2019.

14. Another measure requires that Palestinians undertaking "travel for extended stay" can cross through Erez only if they agree to sign a waiver stating they will not return to Gaza for at least one year. This new measure is included in Israeli official policy.[17] A number of applicants, including students, reported learning of this regulation only upon arrival at Erez and had no choice but to sign the waiver or miss an opportunity to study abroad.

15. Further restrictions were introduced during the reporting period prohibiting Palestinians travelling through Erez from carrying electronic devices (other than mobile phones), food items and toiletries.[18] Through its monitoring over the years, OHCHR has observed that, when new measures were introduced and existing procedures amended, there was generally little or no communication by the Israeli authorities to inform or advise the affected population. Both the residents and the Palestinian Authority Civil Affairs Office in Gaza, report that, at times, they became aware of a change in procedures only after an application was submitted to Israeli authorities.[19]

16. The Palestinian Authority Civil Affairs Office coordinates with Israel on civil affairs matters, including "passage to and from the West Bank and the Gaza Strip". In 2017, an estimated 1,940,000 people were living in Gaza.[20] During the reporting period, the Palestinian Authority Civil Affairs Office received, on average, up to 1,000 applications per day from Palestinians wishing to exit Gaza. After screening

[13] Ibid., p. 10.

[14] Sarah Adamczyk, *Undocumented and Stateless: The Palestinian Population Registry and Access to Residency and Identity Documents in the Gaza Strip* (Norwegian Refugee Council, 2012), p. 43.

[15] See www.hamoked.org.il/files/2018/1162841.pdf (Hebrew) and www.gisha.org/UserFiles/File/LegalDocuments/procedures/general/200en.pdf (English).

[16] Israel, High Court of Justice. *Gisha and Others v. Minister of Defense and Others*, Case No. HCJ 2852/18, *Petition for Order Nisi*. Available at www.hamoked.org/Document.aspx?dID=Updates1982.

[17] Israel, Coordination of Activities in the Territories, "Unclassified status of authorizations for the entry of Palestinians into Israel", pp. 12 and 13.

[18] Office for the Coordination of Humanitarian Affairs, Humanitarian Bulletin: Occupied Palestinian Territory, December 2017, p. 4.

[19] OHCHR monitoring.

[20] State of Palestine, Palestinian Bureau of Statistics, Main Statistical Indicators in the West Bank and Gaza Strip database, available at: www.pcbs.gov.ps/Portals/_Rainbow/StatInd/StatisticalMainIndicators_E.htm.

the applications in line with Israel's strict criteria, it submitted about 250 applications per day to Israel. Its personnel do not know when or which cases will receive a response and have little or no power to challenge or reverse a decision by Israeli authorities.[21]

17. Each application submitted to Israeli authorities must next go through "security evaluations regarding the applicant and/or members of his family, as well as, according to the required administrative checks, a review of the security, political and strategic interests of the State of Israel regarding the application".[22] Israeli authorities justify rejections or delays in granting permits to patients by concerns over the misuse of permits by Hamas.[23]

18. Regularly, Israeli authorities request that Palestinians go through a security interview at Erez as a precondition to obtaining a permit. Palestinians have reported being subject to degrading treatment and intimidation during such interviews. There have also been reports of pressure on applicants to provide security-related information about Gaza. For instance, during the reporting period a cancer patient seeking treatment outside Gaza was reportedly asked during a security interview to provide details about members of armed groups in Gaza to obtain his exit permit. Since such information was not provided, his permit remained pending under "security review" by the time of drafting of the present report, despite being granted a permit on several previous occasions.[24] Palestinians providing such information to Israeli authorities run serious risks of later being arrested and interrogated by Gaza security forces. Applicants who agree to attend security interviews also risk being arrested and detained by Israel. During the reporting period, Israeli authorities arrested six separate applicants after their security interviews.[25]

Impact on the right to health

19. Owing to the lack of specialized medical care and the acute shortage in medicines in Gaza, doctors often refer patients to hospitals outside of Gaza. Yet, requiring medical treatment does not guarantee an exit permit. According to the World Health Organization (WHO), from 1 June 2017 to 30 May 2018, of 21,443 medical exit permit applications submitted to Israeli authorities, 1 9,583 were delayed or denied on security grounds. Out of 400 patients invited for a security interview during the reporting period, only 40 eventually obtained exit permits, while the others were either denied or waiting for further review.[26]

20. Applications are often delayed for months. Some Palestinians reported that their application was approved one day after a scheduled medical appointment; others received approval on the exact date of their travel, not allowing them adequate time to make it to the appointment; others did not receive any response. Many patients reported missing vital medical appointments or family members missing the chance to see a loved one before the person died.[27] In some cases, patients died due to delays in granting permits. In June 2017, a Palestinian mother of nine children, diagnosed with breast cancer for which no radiotherapy is available in Gaza, died after missing

[21] OHCHR monitoring.

[22] Israel, Coordination of Activities in the Territories, "Unclassified status of authorizations for the entry of Palestinians into Israel", p. 9.

[23] Office for the Coordination of Humanitarian Affairs, "Access to medical care outside Gaza", Humanitarian Bulletin: Occupied Palestinian Territory, special ed., May–June 2017. Available at www.ochaopt.org/content/access-medical-care-outside-gaza.

[24] OHCHR monitoring.

[25] Figures from WHO, Health Access, monthly reports, issued during the reporting period. Available at www.emro.who.int/pse/publications-who/monthly-referral-reports.html.

[26] Ibid.

[27] OHCHR monitoring.

five medical appointments in the West Bank between February and June 2017. Her application requests remained "under security review", despite her having been granted exit permits on previous occasions.

21. A patient in need of medical care outside of Gaza may be accompanied. All companions below 55 years of age require Israeli security clearance in order to travel. There have been a number of reports of patients being granted an exit permit while their companions were denied on security grounds. In April 2018, a 15-month-old girl with cerebral oedema was referred outside Gaza for medical treatment. Her mother was granted a companion permit. The baby was hospitalized for 33 days in East Jerusalem before both returned to Gaza. The mother was not granted a permit for the follow-up appointment. At the time of compiling the present report, the baby remained in hospital without her mother.[28]

22. Most persons seriously injured by Israeli security forces and in need of specialized health care outside of Gaza were not granted exit permits by Israel. On 17 December 2017, a Palestinian man, aged 28, who had been demonstrating at the Gaza-Israel fence, was shot by Israeli security forces in the abdomen, causing significant internal damage. In critical need of specialized medical care, doctors referred him to the St. Louis French Hospital in Jerusalem. The Israeli authorities denied his exit permit and he died five days later from his injuries.[29] Between 30 March and 30 May 2018, 66 exit permit applications were submitted on behalf of Palestinians seriously injured during the demonstrations during that period — 33 were denied, 22 were approved and 11 remained pending under security review.[30]

23. Even if one meets the strict criteria and is granted security clearance, crossing Erez can remain a daunting experience, with the risk of arbitrary arrest and detention. During the reporting period, eight Palestinians, including two patients, all in possession of Israeli approved exit permits, were reportedly arrested by Israeli security forces as they were crossing Erez.[31] Patients in need of medical referrals outside of Gaza also continued to experience significant delays in obtaining funding from the Palestinian Authorities to cover medical expenses.

24. In practice, the permit regime is characterized by its lack of transparency. Countless Palestinians, including terminally ill patients, wait with continued uncertainty about the status of their applications. At times they may receive a text message informing them that their application is "under security review" or that their request has been denied, or they may receive no information at all. On 27 August 2017, a Palestinian woman with uterine cancer died after being denied exit permits and consequently missing three medical appointments in the West Bank between May and August 2017. On each occasion, she had reportedly received a text message the day preceding the scheduled medical appointment, informing her that her application remained "under security review".

25. As freedom of movement is a prerequisite to the exercise of other human rights, such as the rights to family, health and education, the closures and related practices imposed by the Israeli authorities, in particular restrictions of movement, have had a devastating impact on the lives of Palestinians. These practices have also contributed to reinforcing a declared[32] Israeli policy of separation between Gaza and the West

[28] OHCHR monitoring.

[29] OHCHR monitoring.

[30] Figures from WHO, Health Access, monthly reports, issued during the reporting period.

[31] Al-Mezan Centre for Human Rights.

[32] See, for example, the State's response in Israel, High Court of Justice, *Azza Izzat and others v. Minister of Defence*, Case No. HCJ 495/12, 16 August 2012, para. 26. Available at www.gisha.org/UserFiles/File/LegalDocuments/495-12/495-12-Excerpts-from-state-response-16.08.12.pdf.

Bank, including East Jerusalem.[33] This continued to have dramatic consequences on families. About a third of Gaza residents have relatives in the West Bank, including East Jerusalem. As family visits are not one of the criteria for travel, many families remain separated for years.

Impact on economic, social and cultural rights

26. Students from Gaza, once representing 35 per cent of the West Bank student population,[34] are nowadays almost absent from its universities. Students have been subjected to significant restrictions since the outbreak of the second intifada in 2000.[35] Studying in the West Bank is not listed among the criteria for an exit permit. This effectively operates as a blanket ban preventing Gaza students from enrolling in university and other educational programmes in the West Bank, including East Jerusalem.

27. Exit of Palestinians from Gaza to participate in the Friday prayers at Al Aqsa mosque, as a travel criterion as such, continues to be suspended until further notice.[36] This is notwithstanding the granting of limited quotas for age-restricted permits issued on an exceptional basis, in particular during Muslim holidays. For Christians from Gaza, religious holidays are also restricted with quotas and age limitations, reportedly discouraging many from applying. During Easter 2018, Israel allocated 500 permits for Christians over the age of 55. In 2017, Gaza-based Christians were allocated 700 permits without age limitations.[37]

28. Exit for merchants is limited to "senior Palestinian businessmen and traders" and other senior traders "whose entry may contribute to improving the Gazan economy, and who trade only in goods approved under the civil policy applicable at time of submission of the application".[38] In 2017, the number of outstanding permits held by this category dropped by about 50 per cent as compared with previous years,[39] but increased gradually in 2018, with 1,574 permits issued in February,[40] out of about 5,000[41] recognized traders in Gaza. The processing time for permits in this category increased from 55 to 70 business days in October 2017, with many requests reportedly unanswered beyond 70 days. If a permit is granted, the Israeli authorities determine its duration.

29. The only formal commercial crossing for goods into and out of Gaza is Kerem Shalom, which is exclusively controlled by Israel's Land Crossings Authority, under the Israeli Ministry of Defence and the Coordination and Liaison Administration for Gaza.[42] The import into Gaza of goods deemed by Israel to have dual civilian and military use is prohibited unless an Israeli-issued licence to import can be acquired.

[33] See also A/HRC/31/44, paras. 12–31, and A/HRC/34/38, paras. 62–68.

[34] Palestinian Centre for Human Rights, *The Illegal Closure of the Gaza Strip: Collective Punishment of the Civilian Population* (2010), p. 85.

[35] Gisha, "50 shades of control", available at http://gisha.org/50shades/50_Shades_Of_Control_EN.pdf.

[36] Israel, Coordination of Activities in the Territories, "Unclassified status of authorizations for the entry of Palestinians into Israel", p. 7.

[37] Gisha, "50 shades of control".

[38] Israel, Coordination of Activities in the Territories, "Unclassified status of authorizations for the entry of Palestinians into Israel", p. 10.

[39] World Bank, "Economic monitoring report to the Ad Hoc Liaison Committee, 19 March 2018, p. 25; Office for the Coordination of Humanitarian Affairs, Humanitarian Bulletin, December 2017, p. 6.

[40] According to Gisha, in February 2018, 1,574 trade permits had been issued, whereas according to the Office for the Coordination of Humanitarian Affairs Humanitarian Bulletin, in June 2017 and December 2017, it was reported that 738 and 551 had been granted, respectively.

[41] According to the Palestinian Business Association, there are about 5,000 recognized traders in Gaza.

[42] See www.cogat.mod.gov.il/en/Gaza/Pages/keremshalom.aspx.

There are 117 prohibited items, ranging from medical supplies to wood panels, to entire categories of goods such as vehicles and communications equipment.

30. Export of goods from Gaza through Israel to the West Bank, including East Jerusalem, and to international markets, is restricted and dependent on Israeli approval. Few items from Gaza, such as eggplants and tomatoes, can be sold in Israel; the sale of processed food from Gaza is prohibited in Israel and the West Bank.[43] Many Israeli products, including processed food items, are imported and widely sold inside Gaza.

31. During the reporting period, 2,534 truckloads of goods exited Gaza, which represents a decline of 7.6 per cent as compared with the previous period.[44] This is more than the total number of truckloads that exited Gaza during the first eight years of the closure,[45] constituting a monthly rate of 211 truckloads, which is still 78 per cent below the monthly average for 2007, before the imposition of the closures.[46] On 14 and 15 January, the Israeli authorities closed Kerem Shalom following the discovery of a tunnel, which was subsequently destroyed. In May 2018, the Palestinian side of the crossing was severely damaged, by Palestinian demonstrators, leading to a temporary halt in operations.

32. The severe restrictions on the movement of goods and people are the main pillars of the closures and have remained substantially in place for the past decade, severely eroding the productive base of the economy of Gaza, which is ever more locked into dependence.[47] Continued efforts to reconstruct Gaza and to strengthen basic public services have been consistently delayed by Israeli restrictions on the entry of raw materials, essential equipment, spare parts and technical experts.[48] Israel unilaterally declared a significant portion of Gaza farmland and much of its fishing waters as no-go zones, effectively cutting them off for Gazan economic use. The situation has been worsened by measures imposed owing to internal Palestinian political divisions; for example, during the reporting period, the Palestinian Authority implemented measures which led to sharp reductions in the supply of electricity to Gaza.[49]

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[43] Gisha, "10 things that can be done to improve economic activity in Gaza", blog, 26 October 2017. Available at http://gisha.org/en-blog/2017/10/26/10-things-that-can-be-done-to-improve-economic-activity-in-gaza/.

[44] A total of 2,742 truckloads exited Gaza from 1 June 2016 to 31 May 2017. See Office for the Coordination of Humanitarian Affairs, Gaza Crossings: Movement of People and Goods database, available at (www.ochaopt.org/page/gaza-crossings-movement-people-and-goods).

[45] Between 2008 and 2015, according to the Office for the Coordination of Humanitarian Affairs, a total of 2,519 truckloads of goods exited Gaza. See Office for the Coordination of Humanitarian Affairs, Gaza Crossings: Movement of People and Goods database.

[46] A monthly average of 961 truckloads exited Gaza during the first half of 2007, see Office for the Coordination of Humanitarian Affairs, Gaza Crossings: Movement of People and Goods database.

[47] United Nations Conference on Trade and Development, *The Occupied Palestinian Territory: twin deficits or an imposed resource gap*, 2017, p. 2.

[48] Mohammed Samhouri, *Three Years Later After the 2014 Gaza Hostilities:* Beyond Survival: Challenges to Economic Recovery and Long Term Development (United Nations Development Programme, May 2017).

[49] Office of the United Nations High Commissioner for Human Rights, "Power shortages in Gaza deepening the humanitarian crisis, say UN rights experts", 12 July 2017. Available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21866.

B. Movement of people inside Gaza

Israeli-declared restricted areas

33. Inside the territory of Gaza, all along the fence and at sea, the Israeli authorities have unilaterally declared a restricted area, which Palestinians in many cases cannot enter. The extent of the restricted area may vary.[50]

34. Even though those areas are part of Gaza in the Occupied Palestinian Territory, including both farmland and fishing waters, common practices used by the Israeli security forces to enforce the restrictions include regular military incursions, clashes and shootings along the fence, the levelling of land and damage to property.[51]

35. The restricted areas represent a significant amount of the farmland of Gaza and much of its fishing waters, remaining totally or partially inaccessible to Palestinians.[52] It is estimated that around 178,000 people[53] (7.5 per cent of the population of Gaza), including an estimated 3,700 fishermen and their dependants,[54] are affected by the imposition by Israel of access restrictions on the land and sea of Gaza.

36. The 1995 Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip established a maritime activity area for Palestinians up to 20 nautical miles from the Gaza shore and for Israel to "take any measures necessary against vessels suspected of being used for terrorist activities or for smuggling arms, ammunition, drugs, goods, or for any other illegal activity" in all of it.[55] Since 2000, this distance has been restricted by Israeli authorities on the grounds of security concerns. They have at times completely prohibited Palestinians from fishing in their own waters.[56] The maritime activity zone was further restricted following the Hamas takeover of Gaza in 2007 and has since remained generally limited to six nautical miles.

37. During the reporting period, there were approximately 300 incidents of Israeli security forces opening fire at fishermen, killing one fisherman (aged 18), and injuring 21 others. Israeli security forces also arrested at least 44 people (see below), including four children, and confiscated 19 boats while damaging many.[57] Previous reports have documented such practices.[58]

38. On four occasions during the reporting period, Israel extended the fishing zone from six to nine nautical miles,[59] but this extension was limited in time, subject to the

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[50] Up to 300 metres from the fence is considered a no-go zone and up to 1,500 metres a high-risk zone. At sea the limit is six nautical miles.

[51] See A/72/565, paras. 34–35.

[52] Office for the Coordination of Humanitarian Affairs, "Access restricted areas in the Gaza Strip" data sheet, July 2013. Available at www.ochaopt.org/sites/default/files/ocha_opt_gaza_ara_factsheet_july_2013_english.pdf; United Nations, "Gaza ten years later: United Nations country team in the Occupied Palestinian Territory", July 2017. Available at www.un.org/unispal/document/gaza-ten-years-later-un-country-team-in-the-occupied-palestinian-territory-report, p. 18; see also Première Urgence Internationale, "The impact of the ARA on the farmers and fishermen: IHL violations and protection threats in 2017", February 2018, p. 2.

[53] Office for the Coordination of Humanitarian Affairs and World Food Programme, "Between the fence and a hard place", August 2010. Available at www.ochaopt.org/sites/default/files/ocha_opt_special_focus_2010_08_*9_english.pdf.

[54] Office for the Coordination of Humanitarian Affairs, Humanitarian Bulletin: Occupied Palestinian Territory, March 2018, p. 8.

[55] Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip of 28 September 1995, annex I, art. XIV.

[56] A/68/502, p. 2.

[57] OHCHR monitoring.

[58] See A/HRC/34/30, paras. 12–14, and A/72/565, paras. 35 and 41.

[59] The northern sea areas, including Beit Hanoun and Beit Lahia, were always excluded, and remained subject to the limit of six nautical miles.

discretion of Israel. Many incidents were reported by fishermen, including Israeli naval forces shooting live ammunition at fishing boats well before they would reach the six nautical mile limit.[60]

39. Reportedly, 3 of the 44 individuals arrested at sea were indicted for smuggling arms, and their trials were ongoing at the time of finalizing the present report.[61] The others were released shortly after their arrest without being formally charged. Reportedly, according to some victims, once arrested, fishermen are taken handcuffed and blindfolded into Israeli custody and interrogated about Palestinian armed groups and, at times, subjected to ill-treatment. In one case, a fisherman arrested by the Israeli navy was allegedly affiliated with armed groups.[62]

40. None of the fishing boats confiscated by the Israeli navy during the reporting period have been returned to their owners. In previous years, the few boats that were returned were damaged and could not be repaired owing to the restrictions imposed by Israel on import of "dual use items" such as fibreglass, wood panels, engines and spare parts. Consequently, a number of fishermen lost their livelihoods. At the end of the reporting period, 95 per cent of Gazan fishermen were receiving aid from international humanitarian organizations.[63] As at 1 June 2018, 3,700 fishermen were registered in Gaza[64] — reportedly supporting approximately 18,250 other people — compared with 10,000 in 2000.[65] Only about 2,000 of them fish on a daily basis because fish catch and revenues are insufficient.[66] While it is widely assessed, including by the Government of Israel,[67] that the humanitarian and economic situation in Gaza has stretched to breaking point,[68] fishermen, who could help increase income levels and reduce food insecurity, have for many years been denied access by Israel to the most productive fishing areas. Such areas reportedly start at around nine nautical miles from the Gaza shore. According to the Palestinian Authority Department of Fisheries, year-round access to the fishing zone at nine nautical miles would likely result in an increase of approximately 20 per cent in revenue and jobs and an increase of 50 per cent in revenue for the sector and full employment of fishermen across Gaza with access up to 12 nautical miles.[69]

41. The official position of Israel regarding the scope of the restricted areas on land has remained unclear. A military no-go area was first unilaterally declared and enforced in 2000 up to 150 m from the fence and extended in May 2009 to 300 m from the fence. In practice, however, the width of the no-go area varies, with the high-risk zone extending several hundred metres from the fence.

42. Many farmers informed OHCHR about practices of the Israeli security forces in these areas, including the regular use of live ammunition in the direction of farmers, incursions, the levelling of farmland with bulldozers and the spraying of herbicides over Israeli territory in the vicinity of the perimeter fence, affecting their crops.

[60] OHCHR monitoring.

[61] Al Mezan Centre for Human Rights.

[62] Yoav Zitun and Ilan Curiel, "Islamic Jihad member charged with planning attack on Israeli Navy", 4 April 2018. Available at www.ynetnews.com/articles/0,7340,L-5219830,00.html.

[63] See https://euromedmonitor.org/ar/gaza.

[64] Office for the Coordination of Humanitarian Affairs, Humanitarian Bulletin, March 2018, p. 8.

[65] Office for the Coordination of Humanitarian Affairs, "Access restricted areas in the Gaza Strip".

[66] Office for the Coordination of Humanitarian Affairs, Humanitarian Bulletin, March 2018, p. 8.

[67] Itamar Eichner, "Netanyahu: Israel working to prevent humanitarian collapse in Gaza" Y Net News, 4 June 2018. Available at www.ynetnews.com/articles/0,7340,L-5278824,00.html.

[68] Office for the Coordination of Humanitarian Affairs, "Only marginal improvement in humanitarian situation in the Gaza Strip in wake of the intra-Palestinian reconciliation agreement", Humanitarian Bulletin: Occupied Palestinian Territory, January 2018. Available at www.ochaopt.org/content/only-marginal-improvement-humanitarian-situation-gaza-strip-wake-intra-palestinian.

[69] Office for the Coordination of Humanitarian Affairs, Humanitarian Bulletin, March 2018, p. 9.

Farmers noted that many among them have been forced to abandon their land and have lost access to livelihoods as a result of these practices. Some farmers report that they only realize that they are entering the restricted areas, which have no marked boundaries, because they have been shot at by Israeli security forces. On 3 March 2018, a 59-year-old Palestinian farmer died after being shot by Israeli security forces in the upper leg while weeding the family's farmland approximately 200–250 m from the fence.[70]

43. The farming sector is also affected by restrictions on goods deemed by Israel to have dual civilian and military use, with delays and limitations on the import of essential items such as pipes, timber and fertilizers.[71]

44. The Israeli practice of herbicide spraying — allegedly for a better sight line into Gaza — is also reportedly responsible for damaging agricultural production. While Israel stated that it takes place "exclusively over the territory of the State of Israel, along the security barrier with Gaza", the locations and size of areas sprayed were never disclosed, including in court proceedings.[72] This affects crops up to at least 1,000 m from the fence, including produce/crops that would not obstruct visibility owing to their size.[73] Recently, the Ministry of Defence of Israel denied a compensation case for damages estimated at $66,000, submitted on behalf of eight Palestinian farmers.[74] However, the Ministry provided compensation (61,900 new shekels) further to a claim brought by the Nahal Oz kibbutz for damage to their crops caused by aerial spraying.[75]

45. The situation in the restricted areas on land and at sea raises serious human rights concerns for people who reside there or who are dependent on those areas for livelihoods (fishermen, farmers, shepherds or rubble collectors) and remain vulnerable to threats to life and security, arbitrary arrest and detention, loss of livelihoods, restricted access to services and potential displacement. Communications by Israeli authorities regarding the scope of the access restrictions on land and at sea remain inconsistent and therefore arbitrary. The persistent lack of effective remedy and accountability for alleged violations of international law further compounds this situation.

Impact on the rights to life and security of person

46. During the reporting period, 108 Palestinians, including 14 children, were shot and killed by Israeli security forces inside Gaza in the restricted areas[76] — the highest number of fatalities recorded in Gaza since the 2014 hostilities. From 30 March until 31 May 2018, 95 demonstrators, including 12 children, two journalists and one paramedic were killed. A significant number of the killings were the result of shots to the head or upper body. On 14 May 2018 alone, 42 people, including six children, were killed by Israeli security forces.

47. The vast majority of those injured and killed were participating in demonstrations that commenced on 30 March 2018 under the banner of the "Great

[70] OHCHR monitoring.

[71] Office for the Coordination of Humanitarian Affairs, *2018 Humanitarian Needs Overview, Occupied Palestinian Territory* (2017), pp. 35 and 36.

[72] Gisha, "Gaza farmers assess the damage after another round of herbicide spraying", 1 February 2017. Available at http://gisha.org/updates/5776.

[73] Ibid.

[74] Al-Mezan Centre for Human Rights, "Effects of aerial spraying on farmlands in the Gaza Strip", briefing paper, February 2018, p. 8.

[75] Amira Hass, "Farm warfare: how Israel uses chemicals to kill crops in Gaza", *Haaretz*, 9 July 2018. Available at www.haaretz.com/middle-east-news/palestinians/.premium-farm-warfare-how-israel-uses-chemicals-to-kill-crops-in-gaza-1.6245475.

[76] OHCHR monitoring.

march of return". The demonstrations were organized by Palestinian political factions and civil society movements. Hamas and Palestinian Islamic Jihad have acknowledged that a number of their members were among those killed.[77] The demonstrations took place near the fence separating Gaza from Israel, with tents set up approximately 700 metres from the fence in different locations. Thousands of people participated, including families with children, the young and elderly people. International human rights law guarantees the rights to the freedoms of expression, peaceful assembly and association.[78] Those rights must be respected by Israel, and any restrictions on them must be imposed in accordance with the relevant provisions of international human rights and humanitarian law.

48. The large number of casualties among demonstrators, in particular the high percentage of Palestinians injured by live ammunition in circumstances that did not appear to constitute a threat to life to Israeli security forces, raise serious concerns about excessive use of force by Israeli security forces.

49. Public statements and messages by Hamas indicated the intention to use mass protests to infiltrate Israel and seek martyrdom.[79] Hundreds of demonstrators threw stones, burned tyres close to the fence, carried and waved flags and chanted national slogans. In other instances, demonstrators used flying burning kites (which, while not causing any deaths or injuries, inflicted significant damage on Israeli farmlands), occasionally threw Molotov cocktails and damaged the barbed wire on the Gazan side of the fence. In several instances, some damaged the Israeli side of the fence. The Israeli authorities reported that explosive devices and a grenade were used against their forces and that a shooting took place against an Israeli post in northern Gaza. On three occasions, Palestinian protesters attacked the Keren Shalom crossing and severely damaged infrastructure on the Palestinian side.

50. On 20 April 2018, in northern Gaza, a 14-year-old boy was shot in the head by Israeli security forces with live ammunition and killed. The initial probe by the Israeli security forces into the incident indicated that he had attempted to damage the fence,[80] which does not appear to constitute an imminent threat of death or serious injury that could justify the use of firearms. Moreover, information available indicates that the boy was shot as he was running away from the fence, approximately 250–300 metres from it.[81] On 14 May 2018, in central Gaza, a 15-year-old girl was shot in the head by Israeli security forces with live ammunition and killed. Israeli security forces claimed that, shortly before the shooting, the victim had cut some of the barbed wire fence with a cutter. She was reportedly shot in the head after having retreated 100 metres from the fence and was standing with a friend and died instantly.

51. On 29 May, reportedly in response to the deaths in Gaza, nearly 200 rockets and mortar rounds were fired from the Gaza Strip towards Israel, the largest wave of projectiles fired from Gaza since the conclusion of the previous round of fighting in Gaza in 2014.[82] Hamas and the Islamic Jihad claimed joint responsibility for the rockets and mortars fired at Israel. One mortar reportedly landed in the grounds of a kindergarten in a kibbutz in the Eshkol Regional Council, causing no injuries. In response, the Israel Defense Forces retaliated by striking targets throughout the Gaza

[77] See https://moi.gov.ps/Home/Post/123119.

[78] See International Covenant on Civil and Political Rights, arts. 19, 21 and 22.

[79] See S/2018/614, para. 17.

[80] Times of Israel, "Army said to find slain Gaza teen was trying to damage border fence when shot", 21 April 2018. Available at www.timesofisrael.com/army-said-to-find-teen-was-trying-to-damage-gaza-fence-when-shot/.

[81] OHCHR monitoring.

[82] S/2018/614, para. 19.

Strip that it attributed to Palestinian Islamic Jihad and Hamas. No casualties were reported from those retaliatory strikes.

52. In addition to the high casualty toll, the violence experienced or witnessed at the fence brought widespread mental health and psychosocial consequences. While an estimated 210,000 Palestinians were already acutely vulnerable and suffered from severe or moderate mental health disorders,[83] the caseload of people in need of mental health and psychosocial support as a result of such events was estimated to reach approximately 7,490 people with severe mental health issues and 29,960 people with mild to moderate issues. The total number of children in need of such support was projected at 18,725.[84]

53. Israeli authorities stated that security forces were targeting not peaceful demonstrators but "terrorists" and "instigators"[85] intent on breaking the fence and "infiltrating" into Israel. As highlighted by the Spokesperson of the United Nations High Commissioner for Human Rights in a statement issued on 6 April 2018, "an attempt to approach or cross the green-line fence by itself certainly does not amount to a threat to life or serious injury that would justify the use of live ammunition".

54. In addressing protests at the Gaza fence and access restricted areas, Israeli security forces must respect relevant international human rights instruments pertaining to law enforcement, including the principles on the use of force by law enforcement officials. Those principles provide, among other things, that firearms may be used against persons only as a last resort, and if the use of firearms is unavoidable, that firearms may be used against persons only if there is an imminent threat of death or serious injury.[86] Killing or causing deadly injury resulting from the use of force in the absence of imminent threat of death or serious injury may amount to arbitrary deprivation of life.[87] Killings resulting from the unlawful use of force may also constitute wilful killings, which constitute a grave breach of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention).[88]

55. During the ongoing closure, Gaza has endured successive rounds of hostilities, including three major escalations of hostilities (2008–2009, 2012 and 2014) between Israel and armed groups in Gaza. In addition to the loss of life and livelihoods, the extensive destruction of homes and basic infrastructure has had devastating economic and humanitarian consequences, from which many Gazans are still struggling to recover.

56. Since the hostilities in 2014, over 18,200 individuals (3,500 families) remained displaced, living in precarious conditions, often in overcrowded temporary accommodation, and were subjected to various relocations.[89] While lack of funding seems to be the main driver, Israeli restrictions on imports of essential constructions materials into Gaza have reportedly also played a role.[90] Despite these delays, restricted construction materials have been entering regularly via the Gaza Reconstruction Mechanism, agreed in 2014 by the United Nations, the Palestinian

[83] Office for the Coordination of Humanitarian Affairs, *2018 Humanitarian Needs Overview*, p. 33.

[84] Projections drawn up by the Child Protection Mental Health and Psychosocial Support Working Group.

[85] See https://twitter.com/benabyad/status/982533269236285441.

[86] Code of Conduct for Law Enforcement Officials, arts. 2 and 3, and Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, principles 5, 9, 13 and 14; see also A/HRC/34/38, paras. 45–48.

[87] International Covenant on Civil and Political Rights, art. 6.

[88] Fourth Geneva Convention, art. 147; Rome Statute of the International Criminal Court, art. 8 (2) (a) (i).

[89] Office for the Coordination of Humanitarian Affairs, Humanitarian Bulletin, March 2018, pp. 3–6.

[90] Ibid.

Authority and Israel. The prospects of improvement in peoples' lives are diminishing as they live out their days trapped in an enclave with an ever more profound sense of insecurity and hopelessness.

IV. Accountability

57. Four years after the latest escalation of hostilities in Gaza, serious concerns persist about the lack of accountability for alleged violations of international humanitarian law committed by all parties to the conflict, including for allegations of war crimes, as well as violations of international human rights law. Since the publication of the report of the Commission of Inquiry on the 2014 Gaza conflict, the Secretary-General and the United Nations High Commissioner for Human Rights have provided regular updates on the lack of progress concerning the implementation of its recommendations and highlighted concerns about the lack of accountability by the Israeli and Palestinian authorities.[91]

58. The number of cases that were closed by the Israeli Military Advocate-General without any investigation is particularly concerning given the serious allegations and prima facie evidence of violations of international law. According to the latest available update by the Office of the Israeli Military Advocate-General, dated 24 August 2016, out of 500 complaints related to 360 incidents referred to it, 80 incidents were closed before investigations, investigations were ordered into 31 incidents, among which 13 were closed, and three indictments were issued for looting.[92] The focus of the Israeli military justice system on the responsibility of low-ranking soldiers, and the closure of cases on the basis of the lack of reasonable grounds for suspicion of criminal behaviour, does not address the possible responsibility of military commanders and of other superiors.[93] In particular, serious concerns have been expressed about the lack of independence, impartiality, promptness and transparency of the Office of the Israeli Military Advocate-General.[94]

59. On 14 March 2018, the Israeli State Comptroller and Ombudsman published its fourth report on the 2014 Israeli military operation in Gaza.[95] The report suggests that international law was taken into account within the scope of Israel Defense Forces activities in Gaza, and that the civilian population had received assistance during the hostilities.

60. The report also provides an assessment of the fact-finding mechanism established following recommendations of the Turkel Commission — the General Staff mechanism for fact-finding assessments, which is subordinate to the General Chief of Staff. Despite detailing serious deficiencies in the work of that mechanism, the comptroller concludes that it is in line with requirements under international law.[96] However, while the officers of the mechanism are supposed to be outside the chain of command of the incident under examination, it remains an internal oversight body whereby the military is examining its own conduct. Thus, there are concerns as to

[91] See, in particular, A/HRC/37/41, paras. 9–17, A/HRC/34/38, para. 42; and A/71/364, paras. 40 and 51–55.

[92] Military Advocate General's Corps, "Decisions of the Israel Defense Forces Military Advocate-General regarding exceptional incidents that allegedly occurred during operation 'Protective Edge': update No. 5", press release, 24 August 2016. Available at www.law.idf.il/163-7596-en/Patzar.aspx; see also A/72/565, para. 56.

[93] See A/71/364, para. 40; A/HRC/34/38, para. 42; A/HRC/35/19, para. 20; and A/HRC/37/41, paras. 9–16.

[94] A/71/364, para. 40; A/HRC/37/41, para. 11; and A/HRC/35/19, paras. 18–19.

[95] See English translation of the report, available at www.mevaker.gov.il/he/Reports/Report_622/3cdfbe36-04fc-4ff2-b2df-33ce258ac838/dabla-eng.pdf.

[96] Ibid., p. 129.

whether the principles of independence, impartiality and effectiveness were taken into account.

61. Given these issues, it is of concern that that same mechanism is used for the inquiry into the conduct of Israeli security forces as established by the Chief of Staff of the Israel Defense Forces in April 2018, following the killing of Palestinians by Israel Defense Forces in the context of the "Great march of return" in Gaza.[97] In a statement of 30 March 2018, the Secretary-General called "for an independent and transparent investigation into these incidents" by Israeli authorities.[98] This call was echoed on 6 April 2018 by the United Nations High Commissioner for Human Rights[99] and three Special Rapporteurs.[100]

62. On 24 May 2018, the Israeli High Court of Justice issued a decision on the petitions submitted by human rights organizations regarding the Israel Defense Forces rules of engagement, in which it declares that the rules of engagement of the Israel Defense Forces during the Gaza border crisis were legal.[101]

63. The court, given the constraints on its ability to assess the open-fire policy, deferred the question to the investigations mechanism.[102] Further compounding concerns about lack of accountability is the limited access to justice for Gaza residents. In particular, the Knesset has passed several laws over the years exempting Israel from civil liabilities for any wrongful act committed by the Israel Defense Forces towards Palestinians in Gaza, legally defined as an "enemy territory". The constitutionality of that legislation is currently being challenged at the district court level.[103]

V. Conclusion

64. The cumulative impact on the Gaza population of the Israeli-imposed closures, including severe restrictions on movement of people and goods, as well as practices in the access-restricted areas, consistently undermines the ability of Palestinians to enjoy their human rights. Serious challenges remain to ensuring accountability for

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[97] Israeli media reported on 8 April 2018 that the Israel Defense Forces had appointed Brigadier General Moti Baruch, head of the General Staff Doctrine and Training Division, to lead the investigations, see Amos Harel, "Israeli military to launch probe into Gaza border deaths", *Haaretz*, 8 April 2018. Available at www.haaretz.com/middle-east-news/palestinians/.premium-israeli-military-to-launch-probe-into-gaza-border-deaths-1.5978494. See paragraph 47 of the State response dated 29 April 2018 to the petitions against the open fire regulations in the Gaza March of Return. In its decision of 24 May 2018, the High Court took note of the State response that it set up a fact-finding assessment mechanism to investigate claims of unlawful use of force and draw lessons that would minimize casualties in the future.

[98] Farhan Haq, Deputy Spokesman for the Secretary-General, "The situation in Gaza", statement, 30 March 2018. Available at www.un.org/sg/en/content/sg/statement/2018-03-30/statement-attributable-spokesman-secretary-general-situation-gaza.

[99] Liz Throssell, Spokesperson for OHCHR, "Gaza and Guatemala", press briefing note, 6 April 2018. Available at www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22925&LangID=E.

[100] OHCHR, "UN rights experts condemn Israel's response to Palestinian protests in Gaza", 6 April 2018. Available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22924.

[101] Israel, High Court of Justice *Yesh Din — Volunteers for Human Rights and Others v. Israel Defense Forces Chief of General Staff and Others*, Case No. HCJ 3003/18, Judgment of 24 May 2018. Available at https://supremedecisions.court.gov.il/Home/Download?path=HebrewVerdicts\18\030\030\k08&fileName=18030030.K08&type=2.

[102] Elena Chachko and Yuval Shany, "The Supreme Court of Israel dismisses a petition against Gaza rules of engagement", Law Fare blog, 26 May 2018. Available at www.lawfareblog.com/supreme-court-israel-dismisses-petition-against-gaza-rules-engagement.

[103] A/HRC/37/41, para. 16.

alleged violations of international human rights law and international humanitarian law.

VI. Recommendations

65. **The following recommendations should be read in conjunction with the numerous recommendations contained in previous reports of the Secretary-General and the United Nations High Commissioner for Human Rights:**

(a) **Israel must immediately lift the closures of Gaza, end practices which may amount to collective punishment against the civilian population and, with due regard to legitimate security considerations, allow free movement of people and goods. Any restrictions on freedom of movement must be in accordance with international law;**

(b) **As the occupying power, Israel is obliged to take all the measures in its power to restore and ensure, as far as possible, public order and safety (l'ordre et la vie publics), including ensuring the food and medical supplies of the population, as well as economic, social and cultural rights including to ensure that health facilities, goods and services are accessible to the protected population, especially the most vulnerable or marginalized members of that population, without discrimination;**

(c) **Israel should ensure that any use of force is in compliance with international law, including during law enforcement operations; the regulations on the use of weapons and crowd control in operations carried out by its forces must be in compliance with the relevant international obligations of Israel, in particular, relevant human rights instruments;**

(d) **Israel should ensure that all incidents in which law enforcement actors kill or injure any Palestinian, including in the restricted areas in Gaza, are promptly subjected to thorough, independent, impartial and effective criminal investigation; that individuals responsible for violations be held accountable; and that victims be provided appropriate redress;**

(e) **As requested by the Human Rights Council in resolution S-28/1, Israel should fully cooperate with the work of the international commission of inquiry established by that resolution.**